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14 **UNITED STATES DISTRICT COURT**  
15 **DISTRICT OF NEVADA**

16 ADAM WYNN TINGLEY,  
17 Plaintiff,  
18 vs.  
19 NEVADA DEPARTMENT OF  
20 CORRECTIONS, et al.,  
21 Defendants.

22 Case No. 3:14-cv-00358-MMD-VPC

23 **ANSWER TO SECOND AMENDED  
24 COMPLAINT  
(Jury Demand)**

25 Defendants, Bruce Bannister, Susan Hoffman, Karry McCullah (incorrectly named as  
26 "Cari McCullough"), and Jonathan Perry, by and through counsel, Adam Paul Laxalt, Attorney  
27 General of the State of Nevada, and Benjamin R. Johnson, Deputy Attorney General, hereby  
28 answer Plaintiff's Second Amended Civil Rights Complaint (#56) as follows:

29 **JURISDICTION OF THE COURT**

30 1. Defendants admit that this court has jurisdiction pursuant to 28 U.S.C. §  
31 1343(a)(3) and 42 U.S.C. § 1983. Defendants deny that jurisdiction is proper on any other  
32 basis.

33 **PARTIES**

34 2. Paragraph 2 contains conclusions and statements of law and no response is  
35 required. To the extent a response is deemed required, Defendants deny the allegations  
36 contained in this paragraph.

3. Paragraph 3 contains conclusions and statements of law and no response is required. To the extent a response is deemed required, Defendants deny the allegations contained in this paragraph.

4. Paragraph 4 contains conclusions and statements of law and no response is required. To the extent a response is deemed required, Defendants deny the allegations contained in this paragraph.

5. Defendants admit that Dr. Bruce Banister was employed by the Nevada Department of Corrections (“NDOC”) as Medical Director.

6. Defendants admit that Sue Hoffman is employed by the NDOC as a Correctional Nurse II at Warm Springs Correctional Center (“WSCC”).

7. Defendants admit that Kerry McCullah (sued as Cari McCullough) is employed by the NDOC as a Correctional Nurse at WSCC.

8. Defendants admit that Jonathan Perry is employed by the NDOC as Director of Nursing at WSCC.

## **NATURE OF THE CASE**

9. Defendants admit Plaintiff had a condition called "pterygium." Defendants deny the remaining allegations in this paragraph.

10. Defendants are without sufficient knowledge or belief to admit or deny the matters asserted in paragraph 10 and therefore deny any and all allegations in this paragraph.

11. Defendants deny.

## **ALLEGATIONS OF FACT**

12. Defendants admit.

13. Defendants are without sufficient knowledge or belief to admit or deny the matters asserted in paragraph 13 and therefore deny any and all allegations in this paragraph.

14. Defendants are without sufficient knowledge or belief to admit or deny the matters asserted in paragraph 14 and therefore deny any and all allegations in this paragraph.

15. Defendants are without sufficient knowledge or belief to admit or deny the matters asserted in paragraph 15 and therefore deny any and all allegations in this paragraph.

1       16. Defendants are without sufficient knowledge or belief to admit or deny the  
2 matters asserted in paragraph 16 and therefore deny any and all allegations in this paragraph.

3       17. Defendants admit that Dr. Fisher operated on Plaintiff. Defendants deny the  
4 remaining allegations in paragraph 17.

5       18. Defendants are without sufficient knowledge or belief to admit or deny the  
6 matters asserted in paragraph 18 and therefore deny any and all allegations in this paragraph.

7       19. Defendants are without sufficient knowledge or belief to admit or deny the  
8 matters asserted in paragraph 19 and therefore deny any and all allegations in this paragraph.

9       20. Defendants admit Plaintiff had a second eye surgery performed by Dr.  
10 Komadina.

11       21. Defendants admit that Dr. Komadina prescribed eye drops following the second  
12 surgery. Defendants deny the remaining allegations in paragraph 21.

13       22. Defendants are without sufficient knowledge or belief to admit or deny the  
14 matters asserted in paragraph 22 and therefore deny any and all allegations in this paragraph.

15       23. Defendants are without sufficient knowledge or belief to admit or deny the  
16 matters asserted in paragraph 23 and therefore deny any and all allegations in this paragraph.

17       24. Defendants are without sufficient knowledge or belief to admit or deny the  
18 matters asserted in paragraph 24 and therefore deny any and all allegations in this paragraph.

19       25. Defendants are without sufficient knowledge or belief to admit or deny the  
20 matters asserted in paragraph 25 and therefore deny any and all allegations in this paragraph.

21       26. Defendants are without sufficient knowledge or belief to admit or deny the  
22 matters asserted in paragraph 26 and therefore deny any and all allegations in this paragraph.

23       27. Defendants are without sufficient knowledge or belief to admit or deny the  
24 matters asserted in paragraph 27 and therefore deny any and all allegations in this paragraph.

25       28. Defendants are without sufficient knowledge or belief to admit or deny the  
26 matters asserted in paragraph 28 and therefore deny any and all allegations in this paragraph.

27       29. Defendants deny.

28       ///

30. Defendants are without sufficient knowledge or belief to admit or deny the matters asserted in paragraph 30 and therefore deny any and all allegations in this paragraph.

## **CAUSE OF ACTION**

31. Defendants deny.

32. Defendants deny.

33. Defendants deny.

## **PRAYER FOR RELIEF**

Defendants deny Plaintiff is entitled to any of the relief sought in the Second Amended Complaint on page 6.

## **AFFIRMATIVE DEFENSES**

Defendants, individually and collectively, also assert the following Affirmative Defenses:

1. The Second Amended Complaint fails to state a claim upon which relief can be granted.

2. Defendants were not personally involved in the cause in fact and/or the proximate cause of the alleged constitutional deprivations.

3. This action is time-barred by applicable statutes of limitations.

4. Defendants at all relevant times acted in good faith toward Plaintiff, therefore, defendants are entitled to qualified good faith immunity from damages.

5. Defendants are entitled to qualified and absolute immunity

6 At all relevant times herein Defendants acted in accordance

and prison procedures that are constitutionally required.

7. Plaintiff failed to state a cognizable constitutional claim under 28 U.S.C. § 1333 (a)(3) and 42 U.S.C. §1983.

8. Plaintiff failed to mitigate damages, if any, and therefore, is barred from seeking any damages hereunder.

9. Plaintiff was himself negligent in his conduct and such negligence is the sole, primary and superseding cause of any damages sustained by him, if any.

10. Plaintiff's punitive damage claims are barred by law.

1       11. Defendants are immune from liability because the acts complained of were  
2 discretionary in nature or were performed while carrying out a statute or regulation.

3       12. At all-time relevant, Defendants held a good faith belief that they were acting  
4 reasonably and that their actions were privileged and legally justified.

5       13. Plaintiff failed to exhaust administrative remedies as required by the Prison  
6 Litigation Reform Act.

7       14. Plaintiff's conduct constitutes a waiver of any alleged wrongful conduct  
8 undertaken by the answering defendants.

9       15. Plaintiff's conduct ratified any alleged wrongful conduct by the answering  
10 defendants.

11       16. Defendants are immune from liability as a matter of law.

12       17. Defendants reserve the right to amend their reply to allege additional affirmative  
13 defense if subsequent discovery so warrants.

14       18. The negligence of Plaintiff caused or contributed to any injuries or damages  
15 which Plaintiff may have sustained, and the negligence of these defendants, if any, requires  
16 that the damages of Plaintiff be denied or diminished in proportion to the amount of  
17 negligence attributable to Plaintiff.

18       19. Defendants cannot be sued for monetary damages while acting in their official  
19 capacity in a civil rights action.

20       20. Plaintiff is estopped from pursuing any claim against defendants in accordance  
21 with equitable principles of jurisprudence.

22       21. The doctrines of res judicata and/or collateral estoppel bar Plaintiff from  
23 asserting the matters set forth in his Second Amended Complaint and also acts as a bar to  
24 any relief sought by Plaintiff.

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WHEREFORE, Defendants pray for relief as follows:

1. That Plaintiff takes nothing by virtue of his Second Amended Complaint;
  2. For attorney fees and costs of suit herein.
  3. A jury trial is hereby demanded by Defendants.

DATED this 14<sup>th</sup> day of August, 2015.

**ADAM PAUL LAXALT**  
**Attorney General**

By: Benjamin R. Johnson  
BENJAMIN R. JOHNSON  
Deputy Attorney General  
Bureau of Litigation  
Public Safety Division

## *Attorneys for Defendants*

## **CERTIFICATE OF SERVICE**

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 14<sup>th</sup> day of August, 2015, I caused to be served a copy of the foregoing

**ANSWER TO SECOND AMENDED COMPLAINT (Jury Demand), by U.S. District Court**

**CM/ECF Electronic Filing to:**

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Linton H. Ward  
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